

---

In The  
SUPREME COURT OF THE UNITED STATES  
October Term 2022

---

Justin Rashaad Brown,  
*Applicant/Petitioner,*

v.

United States,  
*Respondent.*

---

Application for an Extension of Time Within  
Which to Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit

---

APPLICATION TO THE HONORABLE  
JUSTICE SAMUEL A. ALITO  
AS CIRCUIT JUSTICE

---

HEIDI FREESE  
RONALD KRAUSE  
FEDERAL PUBLIC  
DEFENDER'S OFFICE  
100 Chestnut Street, 3rd Floor  
Harrisburg, PA 17101  
(717) 782-2237

JEFFREY T. GREEN\*  
PETER A. BRULAND  
SIDLEY AUSTIN LLP  
1501 K STREET N.W.  
WASHINGTON, D.C. 20005  
(202) 736-8291  
jgreen@sidley.com

XIAO WANG  
NORTHWESTERN SUPREME  
COURT PRACTICUM  
375 East Chicago Avenue  
Chicago, IL 60611  
(312) 503-1486

MEREDITH R. ASKA MCBRIDE  
SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, IL 60603  
(312) 853-7081

November 18, 2022

*Attorneys for Applicant/Petitioner*

\*Counsel of Record

## **APPLICATION FOR AN EXTENSION OF TIME**

Pursuant to Supreme Court Rule 13.5, Applicant Justin Rashaad Brown respectfully requests a 30-day extension of time within which to petition for a writ of certiorari, up to and including Wednesday, December 28, 2022.

## **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

On August 29, 2022, in *United States v. Brown*, No. 21-1510 (attached as Exhibit 1; original District Court Judgment attached as Exhibit 2), the Third Circuit affirmed Mr. Brown's fifteen-year mandatory-minimum sentence under the Armed Career Criminal Act. (Exhibits 3 & 4). Mr. Brown did not petition the Third Circuit for rehearing *en banc*.

## **JURISDICTION**

This Court will have jurisdiction over any timely filed petition for certiorari in this case under 28 U.S.C. § 1254(1). Under Supreme Court Rules 13.1, 13.3, and 30.1, a petition for a writ of certiorari is currently due to be filed on or before November 28, 2022. This application has been filed at least 10 days before the date a petition would be due. See Sup. Ct. R. 13.5.

## REASONS JUSTIFYING AN EXTENSION OF TIME

1. The decision below created a circuit split on an important and recurring question about the Armed Career Criminal Act. Under section 922(g) of the Act, persons with prior felony convictions may not possess a firearm. See 18 U.S.C. § 922(g). And those with three or more “serious drug offenses” on their records face a stiffer sentence for violating section 922(g). See *id.* § 924(e). To decide whether a prior state conviction counts as a “serious drug offense” for sentence-enhancement purposes, this Court uses the categorical approach. See *Taylor v. United States*, 495 U.S. 575, 600 (1990). That means asking whether the elements of a state crime are “the same as, or narrower than, the relevant generic offense” or other federal-law comparator. *Mathis v. United States*, 579 U.S. 500, 519 (2016). If the elements are the same or narrower, the crimes are a categorical match, and the state conviction is an ACCA predicate, warranting a harsher sentence. If not, the state conviction doesn’t count for sentence-enhancement purposes.

Things get (more) complicated when federal law changes along the way. That’s what happened here. When Mr. Brown was arrested for violating section 922(g), he had four state-law marijuana convictions on his record. At the time, federal law and state law were a categorical match. But then Congress narrowed the federal definition of marijuana. Under the new definition, Mr. Brown’s state convictions were not a categorical match—meaning that they could not serve as

ACCA predicates for sentence-enhancement purposes. That was how the law stood when Mr. Brown pleaded guilty and was sentenced for violating section 922(g).

Now for the circuit split. On facts similar to Mr. Brown's, the Fourth Circuit has held that courts should conduct the categorical analysis using the version of federal law in effect at the time of sentencing. See *United States v. Hope*, 28 F.4th 487 (4th Cir. 2022). As the court observed, this approach tallies with the federal Sentencing Guidelines, which require courts to use the sentencing manuals “in effect on the date that the defendant is sentenced.” *Id.* at 505 (quoting U.S.S.G. § 1B1.11).

The decision below departed from that approach. According to the Third Circuit, courts should conduct the categorical analysis using the version of federal law in effect when the defendant committed his section 922(g) offense—never mind whether that law is now defunct. *United States v. Brown*, 47 F.4th 147, 151 (3d Cir. 2022). That is so (reasoned the court) because the federal savings statute bars implied repeals of criminal penalties. This holding created a circuit split—as the Third Circuit expressly acknowledged:

“We part ways with the Fourth Circuit, which, when faced with the same categorical inquiry . . . held that courts must look to federal law in effect when the defendant is sentenced federally.”

*Id.* at 153. As for the Guidelines, the Third Circuit rejected the Fourth Circuit's approach, stating that “neither *Hope* nor this case are Guidelines cases.” *Id.* at 154.

Complicating matters further, the Eleventh Circuit has faced a similar question and reached a different answer, under a different rationale. See *United*

*States v. Jackson*. 36 F.4th 1294 (11th Cir. 2022), *vacated*, 2022 WL 4959314 (11th Cir. Sept. 8, 2022). That court initially viewed the timing question through a due-process lens. *Jackson*, 36 F.4th at 1300; see also *Brown*, 47 F.4th at 153 (citing *Jackson* approvingly). Later, however, the Eleventh Circuit vacated its opinion *sua sponte* and ordered supplemental briefing. See *United States v. Jackson*, 2022 WL 4959314 (11th Cir. Sept. 8, 2022).

In short, the courts of appeals are divided on both the timing question and the correct approach to answering it. The upshot is that two circuits are in direct conflict, and a third is second-guessing itself. A thirty-day extension is warranted to allow counsel to evaluate, frame, and present these issues in the most effective manner for this Court's consideration.

2. Jeffrey Green, Co-Director of the Supreme Court Practicum and counsel of record in this case, is also appointed counsel in five D.C. Court of Appeals cases currently briefing and/or preparing for oral argument, *Johnson v. United States* (No. 13-CF-493), *Parker v. United States* (No. 19-CF-1168), *Proctor v. United States* (No. 22-CF-0349), *Minor v. United States* (No. 18-CF-0686), and *Neal v. United States* (No. 17-CF-1346). And Mr. Green has ongoing, active litigation in the United States District Court for the District of Columbia, the District of Columbia Superior Court, the United States District Court for the District of Delaware, the United States District Court for the District of Utah, the United States District Court for the Eastern District of Pennsylvania, and the Superior Court of the U.S. Virgin Islands. An additional 30-day extension would allow Mr. Green to effectively

contribute to his matters including Applicant's petition as well as his other client business.

An extension is also necessary because of other client matters. For example, in the coming months, the Northwestern Supreme Court Practicum has several overlapping commitments in cases before this Court, including petitions for writs of certiorari in *Alvarez v. New York* (22-), *Rodriguez v. United States* (22-), and *Washington v. Shinn* (22-), as well as reply briefs in *Barrieta-Barrera v. United States* (No. 21-8229), *Miclaus v. United States* (No. 21-8129), and *Vargas-Soto v. United States* (No. 20-10705).

The Director of the Northwestern Supreme Court Practicum is Xiao Wang. Professor Wang has several pending matters in the federal circuits where he is lead counsel. Professor Wang also has an opening brief due in *Ford v. Reagle* (21-3061) in the United States Court of Appeals for the Seventh Circuit on November 28, 2022, and an opening brief due in *Saffeels v. United States* (20-3524) in the United States Court of Appeals for the Third Circuit on December 12, 2022. An extension would allow Professor Wang to effectively contribute to his pending matters, including this one.

**3.** The Federal Public Defender's Office of the Middle District of Pennsylvania, led by the Federal Public Defender, Heidi R. Freese, and the First Assistant Federal Public Defender, Ronald A. Krauss, is currently involved in both appellate and trial level cases in the Third Circuit Court of Appeals and the United States District Court for the Middle District of Pennsylvania. Ms. Freese is

currently preparing for trial in *United States v. Ledee* (No.1:21-CR-72), and *United States v. Brashear* (No. 1:21-CR-028). Mr. Krauss, along with his colleagues in the Appellate Unit, is currently working on opening and reply briefs, as well as preparing for oral arguments, in *United States v. Briseno-Flores* (No. 22-2364), *United States v. Letterlough* (No. 22-2703), *United States v. Sater* (No. 22-1621), *United States v. Summerlin* (No. 22-2054), *United States v. Fischer* (Nos. 22-3038, -3039 & -3041, D.C. Cir.), *Gelsing v. Super. Fayette SCI et al.*, (No. 21-2844), and *United States v. Henry* (No. 22-1464). An additional 30-day extension would allow Ms. Freese and Mr. Krauss to effectively contribute to these matters, including Applicant's petition, as well as their other client matters and various administrative matters involving management of the Federal Public Defender's Office.

### **CONCLUSION**

For the foregoing reasons, Mr. Brown respectfully requests that this Court grant a thirty-day extension, up to and including December 28, 2022, within which to petition for a writ of certiorari.

Respectfully submitted,

/s/ Jeffrey T. Green

HEIDI FREESE  
RONALD KRAUSE  
FEDERAL PUBLIC  
DEFENDER'S OFFICE  
100 Chestnut Street, 3rd Floor  
Harrisburg, PA 17101  
(717) 782-2237

XIAO WANG  
NORTHWESTERN SUPREME  
COURT PRACTICUM  
375 East Chicago Avenue  
Chicago, IL 60611  
(312) 503-1486

November 18, 2022

JEFFREY T. GREEN\*  
PETER A. BRULAND  
SIDLEY AUSTIN LLP  
1501 K STREET N.W.  
WASHINGTON, D.C. 20005  
(202) 736-8291  
jgreen@sidley.com

MEREDITH R. ASKA MCBRIDE  
SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, IL 60603  
(312) 853-7081

*Attorneys for Applicant/Petitioner*

\*Counsel of Record